



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: WP Photographic Services

File: B-278897.4

Date: May 12, 1998

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Marian Sullivan, Esq., and Martin McAlwee, Esq., Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined to exclude protester's proposal from the competitive range where the agency concluded, on the basis of an evaluation which was reasonable and consistent with the solicitation evaluation criteria, that the proposal had no reasonable chance of being selected for award because major revision was necessary to correct substantial deficiencies in the relatively high-priced proposal.

DECISION

WP Photographic Services protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. F08650-96-R-0415, issued by the Department of the Air Force for visual information end products and technical services in support of pre-launch, launch, post-launch, and non-launch operations, also called the Visual Information Technical Contract (VITC). WP contends that the elimination of its proposal from the competitive range lacked a reasonable basis and was otherwise improper.

We deny the protest.

The RFP, issued on May 20, 1997, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity, labor-hour contract for a base period with four 1-year options. The purpose of the contract is to obtain visual imaging end products for launch and non-launch events for the 45th Space Wing and NASA's Kennedy Space Center. The RFP stressed that the VITC was one of the largest contracts of its type in the Air Force and the quality and timeliness of its products and services have a far-reaching effect. The RFP further stressed that the critical nature of the requirement dictates that full support capability be available on short

notice with quick turnaround delivery times and that the contractor must be fully capable of simultaneous operation for the various launch programs. One of the significant requirements of the solicitation was the offeror's preparation of a VITC statement of work (SOW) incorporating the stated requirements of the RFP.

The RFP provided for a best value award to be determined by an integrated assessment of the cost criterion, the specific criteria, assessment criteria, proposal risk, performance risk, and general considerations. The RFP listed the following criteria:

- (1) Technical/Management
 - (a) Project Management
 - (b) Image Acquisition/Processing/End Products
- (2) Cost
 - (a) Completeness
 - (b) Reasonableness
 - (c) Realism
- (3) General Considerations

All technical evaluation factors, when combined, were approximately equal to cost. General considerations were of lesser importance but were to be an important consideration in the award decision. The RFP also provided that proposals would be evaluated for proposal risk, which would involve an assessment of the risk associated with the offeror's proposed approach to accomplish the requirements. Proposals were also to be evaluated for performance risk, which would involve an assessment of the probability of the offeror successfully accomplishing the proposed effort based on the offeror's demonstrated relevant present and past performance.¹

[Deleted] initial proposals were received by the June 20, 1997 closing date. After evaluation of the initial proposals, the Air Force determined that all proposals contained informational deficiencies and format errors. Amendment No. 0003 was issued to clarify common problem areas and allow all offerors an opportunity to revise their proposals. Each offeror submitted a revised proposal by the September 19 closing date. Each revised proposal was evaluated for performance and proposal risk in addition to being evaluated under a color/adjectival rating

¹The possible evaluation ratings for proposal risk and performance risk were high, moderate, and low.

scheme for each of the evaluation factors.² A competitive range briefing was provided by the evaluators to the Source Selection Authority. The proposals of [deleted] firms, including WP, were excluded from the competitive range. The agency reports that the competitive range was determined on the basis of price and technical merit, including proposal deficiencies and their potential for correction and the possibility of selection for award. Offerors were notified of exclusion from the competitive range by letters dated December 12, 1997. A debriefing was held with WP on January 23, 1998, in which the agency identified areas of WP's proposal needing improvement. WP filed this protest on February 2, 1998.³

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method for meeting them. Beneco Enters., Inc., B-278591, Feb. 17, 1998, 98-1 CPD ¶ 91 at 3. When a proposal is technically unacceptable and would require major revisions to become acceptable, the agency is not required to include it in the competitive range. Laboratory Sys. Servs., Inc., B-256323, June 10, 1994, 94-1 CPD ¶ 359 at 2. Even where a proposal is fully acceptable technically (or could be rendered so through discussions), it may properly be excluded from the competitive range if, in light of the competing proposals, the contracting officer determines that the proposal has no reasonable chance of award. Curry Contracting Co., Inc., B-254355, Dec. 13, 1993, 93-2 CPD ¶ 334 at 3. In reviewing an agency's determination to exclude a proposal from the competitive range, we apply the standard used in reviewing all aspects of an agency's technical evaluation of proposals: we review the record to determine whether the agency's judgment, including the judgment that a particular proposal did not have a reasonable chance of award, was reasonable, supported by the record, and consistent with the applicable evaluation criteria. Tri-Services, Inc., B-256196.4, Sept. 30, 1994, 94-2 CPD ¶ 121 at 2.

Here, under the first listed technical/management factor, project management, WP's proposal was evaluated with a color rating of red, with no strong points and several weak points. A total of 24 deficiency reports (DRs) and 60 clarifications requests (CRs) were generated as a result of WP's evaluation under this area. Under the second factor, WP's proposal generated and received a color rating of red, with no strong points and numerous weak points. WP also received a high proposal risk

²The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

³The other two offerors whose proposals were excluded from the competitive range also filed protests that were subsequently dismissed when the agency decided to include those proposals in the competitive range.

rating because the evaluators were concerned about quality, delay, and nonsupport issues. WP did receive a low rating for performance risk based on its predominantly satisfactory past performance ratings. Finally, WP's proposed price was higher than that of all but one of the other offerors.

The agency's determination that WP was outside of the competitive range with no reasonable chance for award was particularly based on WP's failure to demonstrate an approach to receiving workorders, deploying resources, and performing work resulting in consistently acceptable image files/end products in required time frames. Specifically, the agency found that WP:

- a. Fail[ed] to meet contract requirements by stating in . . . its response to Amendment No. A0003 . . . that "WP Photo can not promise in advance that we will positively make all timeliness" relevant to 3 back-to-back launch and landing events and non-launch events.
- b. Propos[ed] the use of nonavailable Government-provided services/support.
- c. Fail[ed] to describe setup and operational processes to include personnel, equipment, and numbers and types of cameras, lenses, trackers, and film for each type of vehicle launch/landing events.
- d. Fail[ed] to describe technical processes relative to over and above image acquisitions.
- e. Fail[ed] to describe technical processes relative to camera and optical repair capabilities.
- f. Fail[ed] to provide specifications for all film products listed in Exhibits A, B, and C.
- g. Fail[ed] to provide a users guide for customers.
- h. Fail[ed] to provide a phase-in plan ensuring a smooth and nondisruptive transition
- i. Propos[ed] a limited management staff with numerous responsibilities.

This information was provided to WP during the debriefing held on January 23.

In its initial protest, WP argued that the Air Force's competitive range determination was flawed because it failed to consider costs or past performance and failed to evaluate the areas of technical/management as required by section M of the solicitation. As explained above, the record establishes that the agency considered

both cost and past performance in making the competitive range determination. In addition, the agency evaluated the technical and management areas of the proposals as required by section M.

WP also argued that in view of the fact that the solicitation required offerors to write their own SOW and propose a plan based on general guidance from the solicitation which necessarily invites variations in proposal responses and an increase in CRs and DRs, the elimination of its proposal from the competitive range lacked a reasonable basis. WP maintained that the deficiencies cited by the agency did not pose an insurmountable obstacle and could readily be addressed through discussions. The agency maintains that WP's proposal did not reasonably address the essential requirements of the solicitation and contained substantial technical drawbacks that would require virtually an entirely new technical proposal in order to become technically acceptable.

The record supports the agency's determination to exclude WP's proposal from the competitive range. In response to a solicitation that specifically cautioned offerors about the need for timely delivery of image files/end products, WP stated in its proposal, in bold print, that it could not promise in advance that it would positively make all time frames. This provided the agency with a reasonable basis to conclude that WP was not committing to fulfilling an essential requirement of the solicitation. Further, as outlined above, the agency downgraded WP's proposal for numerous failures to provide for essential requirements of the solicitation, such as: failing to provide a user's guide; failing to provide technical descriptions for meeting government equipment maintenance support; failing to provide technical descriptions for meeting presentation services; failing to provide a contingency plan; and failing to provide maximum daily production capacity. Further, WP's proposal generated almost three times as many DRs and CRs as any other offeror's and was [deleted]. There were no strong points in WP's proposal and its proposal risk assessment was high because the evaluators concluded that WP's approach would result in nonsupport, delays, inconsistent quality, delayed launch analysis/news releases, and increased equipment failure. WP did not directly challenge or rebut the agency's substantive findings about its inadequate response to essential requirements, other than asserting that the CR's and DR's were duplicative, and simply arguing that these matters could have been addressed during discussions. However, in light of its determination that WP's proposal was technically unacceptable with no strong points and numerous weak points, and would need major revisions to become acceptable, the agency reasonably eliminated the proposal from the competitive range on the basis that the proposal did not have a reasonable chance for award.

In its comments on the agency report, WP argues that the Air Force failed to treat all offerors fairly and equally because the agency admitted [deleted] proposals back into the competitive range that received the same color code assessment as did WP, and that WP received a superior technical/management risk assessment than

[deleted] of those offerors. While the protester is correct in that the [deleted] proposals admitted back into the competitive range had the same color code assessment as did WP, the record shows that those [deleted] offerors were more favorably evaluated within the same range. [Deleted] offerors' proposals generated significantly fewer CRs and DRs, [deleted], than did WP and [deleted] proposals were credited with having several strong points whereas WP's proposal did not have any strong points. WP also alleges that it was not treated fairly because it had a superior technical/management risk assessment than the [deleted] proposals readmitted to the competitive range. However, while WP's proposals did receive a better performance risk rating than those [deleted] offerors, those proposals received a moderate performance risk rating and were [deleted] cited as having predominately satisfactory ratings. Considering all of the other legitimate concerns that the evaluators had with WP's proposal and the relative rankings of the other proposals, we see no basis to conclude that WP has been treated unfairly.

Finally, in its comments, the protester for the first time responds to the agency's stated DRs. In the majority of the instances, WP maintains that the agency's concerns could be resolved during discussions and in other instances WP contends that the generated DR did not reflect a specific solicitation requirement. As explained above, even where a proposal can be rendered technically acceptable through discussions, it still may properly be excluded from the competitive range, where, when compared to competing proposals, the contracting officer determines that it has no reasonable chance for award. Curry Contracting Co., Inc., supra. In any event, WP's challenge to these evaluations are untimely. During a debriefing held on January 23, 1998, WP was specifically advised about the concerns the agency had with its technical proposal. WP was also provided with debriefing charts that detailed all areas where the agency determined WP had failed to adequately address the requirements. In its initial protest filed with our Office on February 2, WP did not specifically challenge the evaluation of its proposal. Our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier) or not later than 10 days after a statutorily required debriefing. 4 C.F.R. § 21.2 (a)(2) (1997). Here, during the debriefing, the protester was advised of the specific technical shortcomings of its approach and the CRs and DRs provided in the report merely elaborated on the areas previously identified by the agency as deficient. Consequently, WP was required to raise the particular objections concerning the evaluation of its proposal within 10 days of the debriefing.

The protest is denied.

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